



A Confederation of the Salish,
Pend d' Oreilles
and Kootenai Tribes

THE CONFEDERATED SALISH AND KOOTENAI TRIBES
OF THE FLATHEAD NATION

P.O. BOX 278
Pablo, Montana 59855
(406) 275-2700
FAX (406) 275-2806
www.cskt.org



A People of Vision

TRIBAL COUNCIL MEMBERS:

Ronald Trahan - Chairman
Carole Lankford - Vice Chair
James V. Matt - Secretary
Len Twoteeth - Treasurer
Vernon S. Finley
Shelly R. Fyant
Leonard W. Gray
Lloyd D. Irvine
Terry L. Pitts
Patty Stevens

April 28, 2014

State-Tribal Relations Interim Committee (2014)
63rd Montana State Legislature
Hon. Jonathan Windy Boy, Chairman
Capital Building
Helena, Montana

**RE: Written Testimony of CSKT Staff Attorney John Harrison
Bison Management Panel, Flathead Reservation Field Hearing**

Chairman Windy Boy and Committee Members,

From time immemorial the aboriginal homeland of the Confederated Salish and Kootenai Tribes of the Flathead Reservation (CSKT) reached from what is now British Columbia, down through parts of what are now the states of Montana, Idaho, and Wyoming, including the Greater Yellowstone Area (GYA).

Like most tribal nations in Montana the Salish, Kootenai and Pend d'Oreilles people hunted, fished and gathered in their traditional homelands. An animal that was key to the people's physical and spiritual survival was the buffalo, or bison. The buffalo fed and clothed the people, provided shelter and tools, and was a central part of many cultural and spiritual practices.

As federal policies of the late 19th century resulted in Native People being moved on to reservations and the destruction of the vast bison herds, it was a herd preserved by CSKT members – the Pablo-Allard herd – that helped augment the last wild bison, located in Yellowstone National Park, thus preventing complete extinction. The Yellowstone bison continue to recover, but remain the last wild bison in America.

The buffalo continues to play a profound role in the lives of the Salish, Kootenai and Pend d'Oreilles people. It was with these historic and cultural ties in mind that the CSKT re-initiated their treaty-reserved buffalo hunt.

CSKT TREATY RESERVED HUNTING

There are no rights more profound in the field of Federal Indian Law, and no rights have come at more of a cost to Indian Nations than the rights guaranteed by treaties. In exchange for the promise of an exclusive homeland and other rights retained through the treaty process, tribes ceded vast tracts of lands to the United States. The importance of treaty rights to an Indian Nation cannot be overstated. Many tribes hold their treaty as sacred documents, connecting them to their history and traditional lifeways. Tribal treaty rights are the cornerstone of Federal Indian Law and serve as the documents upon which the federal government's relationship to Indian nations was established.

The CSKT have reserved, among other things, hunting and fishing rights both on and off the reservation. These rights have been secured through the "Treaty with the Flathead, Etc." 12 Stat. 975 (Hellgate Treaty). The Hellgate Treaty is between the United States and the Bitterroot Salish, the Kootenai, and the Upper Pend d'Oreilles. It was signed near present day Missoula, Montana on July 16, 1855. The Hellgate Treaty is one of the "Stevens Treaties"

negotiated by the Governor and Superintendent of Indian Affairs for the Washington Territory, Isaac I. Stevens. Governor Stevens negotiated a majority of the treaties with Indian Nations throughout the northwest, and those treaties contain similar language with regard to hunting, fishing, and gathering. In exchange for accepting what were often smaller reservations, the Stevens Treaty tribes reserved to themselves significant rights to hunt, fish and gather off-reservation in the places where they traditionally pursued those activities. The Flathead Reservation was created through the Hellgate Treaty, and the CSKT are the only Stevens Treaty tribe in Montana.

The specific language in the Hellgate Treaty regarding hunting and fishing is found in Article III, which states in relevant part:

“The exclusive right of taking fish in all the streams running through or bordering said reservation is further secured to said Indians; as also the right of taking fish at the usual and accustomed places, in common with all citizens of the Territory, and of erecting temporary buildings for curing; together with the privilege of hunting, gathering roots and berries, and pasturing their horses on all open and unclaimed lands.”

This Stevens Treaty language has been the subject of much litigation, and has resulted in some of the landmark legal precedent of Federal Indian Law. Montana and federal courts have confirmed the CSKT off-reservation rights to hunt.

When participating in the off-reservation bison hunt, tribal member hunters currently hunt on the “open and unclaimed” lands of Montana in and around the GYA, which are lands managed by the U.S. Forest Service.

RE-INITIATED TRIBAL BISON HUNT

Present day CSKT members continue to engage in off-reservation hunting throughout their aboriginal territory, but the Tribes had refrained from hunting bison until the Montana

State Legislature authorized the Montana Department of Fish, Wildlife, and Parks (FWP) to begin issuing hunt permits for a fair chase hunt of wild bison.

In order to make the state bison hunt more palatable to Montana tribes, and out of respect for their traditions, the 2005 Legislature passed a statute requiring the FWP to issue two state bison permits per tribal government, to be distributed to individuals designated by their respective tribes, prior to the general bison permit lottery.

The CSKT declined the offer of the state permits, instead electing to re-initiate a CSKT hunt based upon the Tribes' treaty-reserved rights to hunt off-Reservation. In 2006 the CSKT Division of Fish, Wildlife, Recreation and Conservation developed a set of bison hunting regulations for CSKT Tribal members that was subsequently approved by the Tribal Council. The Tribes informed Montana officials that the CSKT would be issuing permits to Tribal members for the following season (September 2007).

Based in part on the long standing and productive relationship that the CSKT and Montana have regarding wildlife management both on and off the Flathead Reservation, Montana officials acknowledged the CSKT bison hunt. At the request of the FWP, the Tribes submitted evidence of their historic use of the GYA for hunting bison, together with an explanation of the Tribes' usual practice of regulating their own members who hunt off-Reservation pursuant to treaty-reserved rights.

MULTI-GOVERNMENT HUNT MANAGEMENT

In the spring of 2007, prior to the CSKT re-initiated bison hunt, the Nez Perce Tribe of Idaho, another Stevens Treaty tribe with ties to the GYA, announced that they would also be re-initiating a treaty-based bison hunt. Montana officials acknowledged the Nez Perce right to

hunt bison after reviewing the tribe's historic and legal justification. With the addition of another tribal government, the FWP and members of the FWP Commission felt it would be beneficial to have all the governments that would be conducting a hunt meet to discuss their respective hunt goals, objectives, and regulations.

In the summer of 2007, representatives from Montana FWP, the CSKT and the Nez Perce Tribe met twice in Missoula in order to discuss bison hunt management. The governments continued to meet in succeeding summers in order to discuss the upcoming season's hunt, review the previous year's harvest, and analyze what worked and did not with regard to multi-government hunt management. What were initially tense, almost adversarial meetings that first summer soon evolved into an open yearly discussion between co-managing partner governments.

In 2009-10, the Confederated Tribes of the Umatilla Reservation in Oregon, and the Shoshone-Bannock Tribes of the Fort Hall Reservation in Idaho petitioned Montana for recognition of their treaty-reserved hunting rights and were added as treaty hunt tribes. Currently the summer pre-hunt manager's meeting includes all four tribal governments, the state of Montana, and representatives from the U.S. Forest Service and Yellowstone National Park.

With regard to the specific CSKT hunt, the Tribes have enacted comprehensive regulations that include a requirement that all tribal member hunters seeking a permit attend a detailed orientation conducted by the Tribes' Fish, Wildlife, Recreation and Conservation staff. During the bison hunt season, CSKT Tribal Wardens patrol the area, and work cooperatively

with wardens from other governments, including the Montana FWP. Violations of CSKT hunting regulations are prosecuted in the Tribal Court through the Tribal Prosecutor's Office.

The Tribes' season currently runs from September through January 31. Hunt statistics are compiled and reviewed at the end of each season with a report going to the Tribal Council, along with any recommendations for the next season.

TRIBAL MEMBERSHIP on the IBMP

In 2009 the CSKT and Nez Perce Tribe, along with the Intertribal Buffalo Council were invited to participate as full partners on the Interagency Bison Management Plan. The tribes and ITBC took their place at the IBMP table in 2010, with the goal of adding a perspective on bison management that had been missing from the discussion.

The CSKT will be a cooperating partner in the upcoming Environmental Impact Statement that Yellowstone National Park will be developing as the new document guiding the management of Yellowstone bison. The Tribes will continue to advocate for hunting to become the primary bison population management tool in the GYA, instead of the current ship to slaughter practices. The Tribes also hope to see expanded tolerance for bison outside of Yellowstone National Park. The Tribes have always maintained that both bison and livestock can co-exist on the Montana landscape, and look forward to working with all parties to find a solution that recognizes the needs of Montana's livestock industry while protecting wild bison and safeguarding the Tribes treaty rights.